

CHAPTER 06-07.2
DISSOLUTION, INSOLVENCY, SUSPENSION, RECEIVERSHIP, AND LIQUIDATION

6-07.2-01. Department taking possession - Procedure.

1. The commissioner may take possession of the business and property of an institution the commissioner supervises if it appears to the commissioner that any of the following conditions exist:
 - a. The directors or officers of the institution, or the liquidators of the institution subject to a voluntary plan of liquidation, have neglected, failed, or refused to take action the commissioner deems necessary for the protection of the institution.
 - b. The directors, officers, or liquidators of the institution have impeded or obstructed an examination. This may include concealment or refusal to submit books, papers, records, or affairs of the institution for inspection to any examiner or to any lawful agent of the appropriate federal financial institution regulatory agency or of the department.
 - c. The business is being conducted in a fraudulent, illegal, or unsafe manner.
 - d. The institution is conducting business in a way causing losses to depositors.
 - e. The institution is operating in an unsafe or unsound condition.
 - f. The capital of the institution is impaired such that the likely realizable value of the institution's assets is insufficient to pay and satisfy the claims of all depositors and all creditors.
 - g. The institution is insolvent or in imminent danger of insolvency or has suspended ordinary business transactions of the institution due to insufficient funds.
 - h. The institution has refused or been unable to pay deposits or obligations in accordance with the terms under which those deposits or obligations of the institution were incurred.
 - i. Substantial dissipation of assets or earnings due to:
 - (1) Any violation of any law or rule; or
 - (2) An unsafe or unsound practice.
 - j. The institution is unable to continue operations.
 - k. The institution is in violation of any applicable state or federal regulation.
 - l. Neglect or refusal to comply with the terms of a final order of the department, state banking board, state credit union board, or federal financial institution's regulatory agency essential to preserve the solvency of the institution.
 - m. The institution has failed to pay the fees charged by the department under section 6-01-17 after due notice of the amount of the fee has been given.
 - n. The institution's board of directors requests that the department take possession for the benefit of depositors, other creditors, shareholders, or other persons.
 - o. The institution has been advised by the federal deposit insurance corporation of the federal deposit insurance corporation's intention to withdraw deposit insurance coverage.
 - p. The institution has been advised by the national credit union association of the national credit union association's intention to withdraw share insurance coverage.
 - q. The directors or officers of the bank, or the liquidators of a bank subject to a voluntary plan of liquidation, have assumed duties or performed acts in excess of those authorized by applicable statutes or regulations, by the bank's organizational documents or plan of liquidation, or without supplying the required bond.
2. If it appears to the commissioner one or more of the conditions in this section exists as to any institution, the commissioner shall cause a notice to be served on the president or other executive officer in charge of the institution and, pursuant to such notice, take possession of the business, property, and records of the institution from the officer citing the reasons for such a demand from this section. The decision of the commissioner is final upon the president or other executive officer's receipt of the notice and the institution immediately shall surrender possession to the commissioner.

6-07.2-02. When possession terminates.

If the commissioner has taken possession of the business and property of an institution under the provisions of section 6-07.2-01, the commissioner shall hold possession of the business and property until the affairs of the institution have been finally liquidated as provided in this chapter, unless the institution has undertaken the voluntary liquidation of the affairs of the institution under this chapter, or either the federal deposit insurance corporation, or any successor federal deposit insurance agency, or the national credit union association, or any successor federal deposit insurance agency, has been appointed receiver.

6-07.2-03. Notice of possession.

1. Immediately upon taking possession of the business and property of an institution under section 6-07.2-01, the commissioner shall give notice by:
 - a. Causing the notice to be served upon the president or other executive officer in charge of the business of the institution;
 - b. Causing the notice to be provided to all correspondent banks of the institution. However, if the commissioner fails to provide the notice, the commissioner shall incur no liability for such failure to act; and
 - c. Causing the notice to be made public.
2. The rights and liabilities of an institution and of the institution's creditors, depositors, shareholders, and all other persons interested in the institution's estate, unless otherwise directed, must be fixed as of the date of the delivery of the notice of possession to the president or other executive officer actively in charge of the business of the institution. In the case of mutual debts or mutual credits of equal priority between the institution and another person, the credits and debts must be setoff and the balance only must be allowed or paid. The right to setoff must be determined as of the date of delivery of the notice of possession of the institution to the president or other executive officer actively in charge of the business of the institution.

6-07.2-04. Appointment of receiver - Restrictions on proceedings, liens, or credits - Bonding.

1. After taking possession of the business and property of the institution, the commissioner may appoint the appropriate federal deposit insurance agency or other qualified party as the receiver of the closed institution. If the federal deposit insurance corporation or national credit union association accepts appointment as receiver, the federal deposit insurance corporation or national credit union association is not required to post bond.
2. Upon appointment as receiver, title to all assets of the institution vests in the receiver without the execution of any instruments of conveyance, assignment, transfer, or endorsement. If no other receiver is appointed as provided in this chapter, the commissioner shall act as receiver and has all of the powers and duties of a receiver as provided in this chapter.
3. Except as otherwise provided, the sole and exclusive right to liquidate and terminate the affairs of an institution is vested in the receiver appointed under this section, and another receiver, assignee, trustee, or liquidating agent may not be appointed by any court or any other person.
4. After the commissioner has taken possession of the business and property of an institution, a suit, action, or other proceeding at law or in equity may not be commenced or prosecuted against the institution upon any debt, obligation, claim, or demand. All such claims may be brought against the receiver.
5. A person holding any of the property or credits of the institution does not have a lien or charge against the property or credits for any payment, advance, or clearance made after the commissioner has taken possession. A lien may not attach to any of the assets or property of the institution by reason of the entry of any judgment recovered against the institution after the commissioner has taken possession of the institution's business and property.

6. Every receiver appointed by the commissioner, except a federal deposit insurance agency, before entering upon the discharge of the receiver's duties and before proceeding to liquidate the affairs of any institution, may be required by the commissioner to furnish a bond. Such bond must be approved as to form and amount by the commissioner. The cost of such bond must be paid from the assets of the institution being liquidated.

6-07.2-05. Powers of receiver.

The receiver of a closed institution may do the following:

1. Take possession of all books, records, and assets of the institution.
2. Collect all debts, claims, and judgments belonging to the institution and do such other acts as are necessary to preserve and liquidate the assets of the institution.
3. Execute in the name of the institution any instrument necessary or proper to effectuate the receiver's powers or perform the duties as receiver.
4. Initiate, pursue, and defend litigation involving any right, claim, interest, or liability of the institution.
5. Exercise any and all existing fiduciary functions of the institution as of the date of appointment as receiver.
6. Borrow money as necessary and secure the borrowings by the pledge or mortgage of assets. The repayment of money borrowed under this subsection and interest on the money borrowed under this section must be considered an expense of administration under section 6-07.2-09.
7. Abandon or convey title to any holder of a mortgage, deed of trust, security interest, or lien against property in which the institution has an interest if the receiver determines that to continue to claim the interest is burdensome and of no advantage to the institution or the institution's depositors, creditors, or shareholders.
8. Repudiate any leases or executory contracts to which the institution is a party in accordance with section 6-07.2-09.
9. Sell any and all real and personal property to compromise any debt, claim, or judgment due from the institution and discontinue any action or other proceedings pending.
10. Pay off all mortgages, deeds of trust, security agreements, and liens upon any real or personal property belonging to the institution and purchase at judicial sale or at sale authorized by court order, any real or personal property in order to protect the institution's equity in that property.
11. Sell in bulk the assets and liabilities of the institution.

6-07.2-06. Sale of assets - Assumptions of deposit liabilities by new institution.

The receiver may sell all or any part of the institution's assets to one or more other state or federally chartered depository institution or to a federal deposit insurance agency in the receiver's corporate capacity. The receiver may also borrow from a federal deposit insurance agency an amount necessary to facilitate the assumption of deposit liabilities by a newly chartered or existing state or federally chartered depository institution, assigning any part or all of the assets of the institution as security for the loan.

6-07.2-07. Presentation of claims - Notice of claims procedure - Rejection of claims - Statute of limitations.

1. All parties having claims against the closed institution shall present the claims of the parties supported by proof to the receiver within one hundred eighty days after the commissioner has taken possession. This period may be extended by written agreement between the claimant and the receiver. The receiver shall cause notice of the claims procedures prescribed by this section to be made public and mailed to each person whose name appears as a creditor upon books of the institution at the person's last address of record. Within one hundred eighty days following receipt of the claim, the receiver shall notify in writing any claimant whose claim has been rejected. Notice

is effective when mailed. A claimant whose claim has been rejected by the receiver may petition a court for a hearing on the claim within sixty days from the date the claim was rejected. The claim of a party against the closed institution must be disallowed, other than any portion of the claim which was allowed by the receiver, as of the end of the sixty-day period if the party having the claim fails to:

- a. Request an administrative review of any claim by the receiver in accordance with proper procedure; or
 - b. File suit on the claim, or continue an action commenced before the appointment of the receiver, before the end of the sixty-day period.
2. The disallowance is final, and the claimant has no further rights or remedies with respect to the claim.

6-07.2-08. Claims filed after one hundred eighty-day claim period.

A claim filed after the one hundred eighty-day claim period prescribed by section 6-07.2-07 and subsequently accepted by the receiver is entitled to share in the distribution of assets only to the extent of the undistributed assets in the hands of the receiver on the date the claim is accepted or allowed.

6-07.2-09. Payment of claims.

1. All claims against the institution's estate, proved to the receiver's satisfaction or approved by the circuit court, must be paid in the following order:
 - a. Administration expenses, including compensation of each regular officer or employee of the receiver for the time actually devoted to the liquidation of the institution at an amount not to exceed the compensation paid to the officer or employee for the performance of the officer's or employee's regular duties; actual expenses of each regular officer and employee necessarily incurred in the performance of the officer's or employee's duties; compensation and expenses of any special representative, assistant, accountant, agent, or attorney employed by the receiver; court costs; and if the commissioner is acting as receiver, such reasonable general overhead expenses as may be incurred by the commissioner in the liquidation of the affairs of the institution which shall be ascertained, determined, and fixed by the commissioner.
 - b. Claims given priority under other provisions of state or federal law.
 - c. Deposit obligations, except that notwithstanding sections 6-03-67 and 41-04-31, if a depositor is indebted to an insolvent bank, the insolvent bank has a right to setoff against the depositor's account.
 - d. Other general liabilities.
 - e. Debt subordinated to the claims of depositors and general creditors.
 - f. Equity capital securities.
2. Interest on a claim may not be paid until all claims within the same class have received the full principal amount of claim.

6-07.2-10. Rejection of contracts and leases.

1. Within one hundred eighty days after the date the commissioner has taken possession, the receiver may reject:
 - a. An executory contract to which the closed institution is a party without any further liability to the closed institution or the receiver; and
 - b. An obligation of the institution as a lessee of real or personal property.
2. The receiver's election to reject a lease does not create a claim for rent other than rent accrued to the date of termination.

6-07.2-11. Subrogation of federal deposit insurance agency to right of depositors.

If a federal deposit insurance agency pays or makes available for payment the insured deposit liabilities of a closed institution, the federal deposit insurance agency, whether or not the federal deposit insurance agency acts as receiver, must be subrogated by operation of law to all

rights of depositors against the closed institution relating to claims for deposits so paid by the federal deposit insurance agency to the extent necessary to enable the federal deposit insurance agency, under federal law, to make insurance payments available to depositors of closed institutions.

6-07.2-12. Appointment of successor fiduciary and representative proceedings.

1. The receiver may appoint one or more successors to any or all of the rights, obligations, assets, deposits, agreements, and trusts held by the closed institution as trustee, administrator, executor, guardian, agent, and all other fiduciary or representative capacities. The approval may be obtained in connection with the proceedings authorized under section 6-07.2-06.
2. A successor's duties and obligations begin upon appointment to the same extent binding upon the closed institution and as though the successor had originally assumed the duties and obligations. Specifically, a successor must be appointed to administer trusteeships, administrations, executorships, guardianships, agencies, and other fiduciary or representative proceedings to which the closed institution is named or appointed in wills, whenever probated, or to which it is appointed by any other instrument or court order, or by operation of law.
3. This section does not impair any right of the grantor or beneficiaries of trust assets to secure the appointment of a substituted trustee or manager.
4. Within thirty days after appointment, a successor shall give written notice, insofar as practical, that the successor has been appointed in accordance with applicable law to all interested parties named in:
 - a. The books and records of the closed institution; and
 - b. Trust documents held by the successor.

6-07.2-13. Notice concerning safekeeping and safe deposit boxes.

The receiver shall cause notice to be mailed to the last address of record to the owners of any personal property in the possession of or held by a closed institution for safekeeping, and to all lessees of safe deposit boxes. The notice must require the intended recipients to appear and assert the claims of the recipients to the property within sixty days from the date of the notice. The receiver shall make such agreements or arrangements as may be necessary for the disposition of property held by the closed institution for safekeeping and the contents of safe deposit boxes, and for the termination of any leases or other contracts relating to the property or contents.

6-07.2-14. Actions for enforcement or rights, demands, or claims vested in an institution or its shareholders of creditors.

Notwithstanding any other provision of state law, the receiver may, within five years from the date of closing of the institution, institute and maintain, in the name of the receiver, any action or proceeding for the enforcement of any right, demand, or claim that is vested in the institution.

6-07.2-15. Contents of articles of dissolution.

If the proceedings described in this chapter have been completed, the receiver shall execute and file, in the manner provided in this section, articles of dissolution, setting forth the following information:

1. The name of the institution;
2. The place where the institution's main office was located;
3. The names and addresses of the directors and officers of the institution at the time the liquidation proceedings were begun;
4. A brief summary of the aggregate amount of general claims finally allowed against the institution, the order in which the claims were paid, and the aggregate amount of all other claims against the institution. A statement of the aggregate payments made on each of the groups of claims must be provided, referencing the orders of the receiver authorizing those payments and the current reports documenting such payments; and

5. A brief summary of the aggregate amount of payments made to the shareholders of the institution, whether of money or other property, and a reference to the orders of the receiver authorizing the payments and to the current reports in which documentation of the payments is made.

6-07.2-16. Execution and filing of articles with department - Certificate of dissolution.

1. The articles of dissolution must be executed in duplicate and presented in duplicate to the department of financial institutions.
 - a. Upon presentation of the articles of dissolution, the commissioner shall endorse the commissioner's approval upon each of the duplicate copies of the articles if the commissioner finds the articles conform to law.
 - b. The commissioner shall file one copy of the articles in the department and issue two certificates of dissolution. The commissioner shall file one certificate of dissolution with the department and shall deliver the second to the receiver.
2. Upon the issuance of the certificate of dissolution, the institution is dissolved and its existence ceases. Upon the issuance of the certificate of dissolution, the receiver is authorized, as agent for the directors and shareholders of any subsidiary trust company, to file any and all documents with the secretary of state necessary to terminate the subsidiary trust company's corporate existence under applicable corporate law.

6-07.2-17. Emergency temporary suspension or conservatorship.

1. If upon the examination or investigation of an institution regulated by the commissioner, the commissioner determines the laws are not being fully observed, that any irregularities are being practiced, or that the institution's capital has been or is in danger of being impaired, the commissioner shall give immediate notice of such determination to the officers and directors of the institutions. In addition, if it is deemed necessary in order to conserve the assets of the institution or to protect the interests of depositors and creditors of the institution, the commissioner may do any one or more of the following:
 - a. Temporarily suspend the right of the institution to receive any further deposits;
 - b. Temporarily close the bank, for a period not exceeding sixty days, which period may be further extended for one or more sixty-day periods as the commissioner may deem necessary;
 - c. Require the officers and directors of the bank to liquidate its outstanding loans insofar as required;
 - d. Recapitalize the institution;
 - e. Require that any irregularities be corrected promptly;
 - f. Require the institution to make reports, daily or at such other times as may be required to the commissioner; and
 - g. Without examination, close or appoint a receiver to operate, for such period as the commissioner may deem necessary, an institution facing an emergency due to withdrawal of deposits, a liquidity event in which the institution is unable to continue operations, a cyber- or technology-related incident, or otherwise, or, without closing the institution, grant the institution the right to suspend or limit the withdrawal of deposits, for such period as the commissioner may determine.
2. If an institution fails or refuses to comply with any such order of the commissioner, or if the commissioner determines a receiver for the institution should be appointed, the commissioner may apply for the appointment of a receiver to take charge of the business affairs and assets of the institution and to wind up the institution's affairs as provided in this chapter.
3. A bank or credit union may request a hearing before the state banking board or state credit union board within ten days of the emergency temporary suspension or conservatorship to review the factual basis used to issue the emergency temporary suspension or conservatorship. The decision made by the state banking board or state

credit union board during the hearing is final. If a hearing is not requested, the initial decision of the commissioner is final.

6-07.2-18. Voluntary liquidation of a bank.

1. An application for approval to voluntarily liquidate the affairs of a bank must be submitted to the commissioner in the manner and form that the commissioner may prescribe, must include the information set forth in this section, and must contain such additional information the commissioner may require. The application must include duplicate copies of a resolution authorizing the dissolution and duplicate copies of a certificate, verified by the applicant's president or chief executive officer or a vice president, stating the facts pertaining to the resolution and that the applicant's liabilities have been paid in full. Each duplicate certificate must have annexed to the duplicate, over the official signatures, evidence showing:
 - a. The date on which the resolution was authorized by the affirmative vote of the holders of at least a simple majority of the outstanding shares entitled to vote on the resolution;
 - b. The number of shares of each class entitled to vote on the resolution which were outstanding on the date of the stockholders' meeting;
 - c. The number of shares of each class entitled to vote on the resolution whose owners were present in person or by proxy;
 - d. The number of shares of each class voted for and against the resolution; and
 - e. The manner in which the meeting was called and the time and manner of giving notice, with a certification that the meeting was lawfully called and held.
2. Upon receipt of the application, the commissioner shall investigate the merits of the application. If the commissioner is satisfied the application is complete and all applicable provisions of law have been complied with, the commissioner shall cause an examination to be made of the applicant institution for the purpose of verifying the payment of all the applicant's liabilities. If the examination satisfies the commissioner that all of the applicant's liabilities have been paid, the commissioner shall endorse one copy of the certificate with the commissioner's statement that the institution is voluntarily liquidating. The return of the endorsed copy of the certificate operates to free the institution from further examination and to authorize the institution, under the original corporate name of the institution, to sue and be sued, to execute conveyances and other instruments, to take, hold, and own property, and to do all such other things as may be necessary to realize upon the institution's remaining assets for the pro rata benefit of the institution's stockholders, but not to engage or continue in any new or other business under the institution's charter or otherwise. The liquidation must proceed as expeditiously as possible, and upon conclusion, the institution shall surrender its charter. In lieu of continuing the liquidation under the original corporate name, the institution may transfer the remaining assets to a trustee agreed upon by the stockholders by a majority vote and upon so doing shall surrender the institution's charter.